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406829—56——1

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 498

TALLINNA LAEVAEHISUS (TALLINN SHIPPING COMPANY), JOSEP FERDINAND MAIPALU, BY A. NURMISTE, MANDATORY, ISAAK KAIN, LIQUIDATOR AND ADMINISTRATOR OF THE ESTATES OF JOHANNES LINKRUUS, THEODOR LIIMAN, ISAAK KAIN, JULIUS TRUUBERK AND JOHANNES INKAPOOL, PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion and findings of fact of the Court of Claims (Pet. App. 9–40) are reported at 139 F. Supp. 762.

JURISDICTION

The judgment of the Court of Claims was entered on April 3, 1956 (Pet. App. 41). Petitioners' motion for a rehearing, timely filed, was denied on July 12, 1956

(R. 95). The petition for a writ of certiorari was filed on October 10, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTIONS PRESENTED

1. Whether the Court of Claims gave proper weight to the testimony of Government witness Pierot in fixing the value of the requisitioned vessel *Maret*.

2. Whether the Court of Claims in awarding just compensation for a vessel requisitioned by the United States Government is required to itemize each element of its award.

STATUTES INVOLVED

The relevant portions of Public Law 101 (Act of June 6, 1941, 55 Stat. 242) and the Merchant Marine Act, Section 902 (46 U. S. C. 1242) are set forth in the petition (Pet. App. 42–43).

STATEMENT

The steamship *Maret* was requisitioned by the United States Government on September 16, 1941, pursuant to Public Law 101 (Act of June 6, 1941, 55 Stat. 242). Between August 1940 and the date of taking, the vessel had been immobilized in the port of St. Thomas, Virgin Islands, as a result of various claims upon it of a legal and political nature.

Prior to June 17, 1940, the vessel was unquestionably owned by Estonian citizens and sailed under Estonian registry. On that date, the Russian Government incorporated Estonia into the Soviet Union and nationalized its shipping industry, claiming thereby to end private ownership of vessels not only within the territorial domination of the Soviet Union, but

wherever they might be. To effectuate this purpose, the Soviet Union ordered the *Maret* and other Estonian vessels to proceed to Murmansk, Russia, with their entire cargo regardless of charter parties or cargo destinations. Ship masters were required to follow such instructions under threats of punishment to themselves and their families (Pet. App. 17). Captain Hall, the master of the *Maret,* received orders to go to Murmansk while the vessel was in the harbor of St. Thomas, Virgin Islands, and was furnished $17,000 for the voyage by the Amtorg Trading Company, the New York trading agent for the U. S. S. R. (Pet. App. 18).

On August 17, 1940, Johannes Kaiv, Counsel General in New York for the Estonian State as it was constituted prior to its incorporation into the Soviet Union, appointed Leopold Truberg as trustee for the original private owners of the vessel, the petitioners here. Truberg filed a libel against the vessel in the United States District Court for the Virgin Islands on behalf of himself as part owner, and as trustee for the other owners, demanding delivery of the ship (Pet. App. 18). Throughout the fall of 1940 and spring of 1941, various other libels and answers thereto were filed in the same court, asserting conflicting claims as to title and the right to possession of the *Maret* (Pet. App. 18–21). One was filed on behalf of the Soviet Government, claiming through the Tallinn Shipping Company; Kaiv intervened as co-libelant in the Truberg libel proceedings; the Soviet-created Estonian State Cargo and Passenger Line also filed a possessory libel; and libels for ship supplies, wages and so forth

were also filed by Amtorg and others. Hearings were held in March and June 1941 to determine ownership of the *Maret,* and as late as October 1941, after the vessel had been requisitioned, a motion made by Kaiv and Truberg for the taking of further evidence was granted. On October 29, 1941, the numerous libelants filed a joint request, which was granted, that the district court proceedings be continued without decision (Pet. App. 22).

The question of ownership of the vessel continued unresolved, and on August 22, 1947, the dispute was transferred from the United States District Court for the Virgin Islands to the Court of Claims as a result of the filing of a petition for an award of compensation by the Soviet-controlled Estonian State Cargo and Passenger Steamship Line (R. 1). Petitioners here filed their intervenors' petition on April 16, 1948, asserting title to the vessel at the date of requisition (R. 3). Although a motion was made on June 9, 1949, by the intervenors to dismiss the original petition of the Estonian State Cargo and Steamship Line, the Court of Claims denied that motion on February 6, 1950, and required the taking of evidence on the issue of ownership (115 C. Cls. 815). Estonian State Cargo actively participated in the examination of witnesses and the trial of the action until June 11, 1952. The issue of ownership was not finally settled until December 1, 1953, when the Court of Claims granted the motion of these petitioners to dismiss the claim of Estonian State Cargo (126 C. Cls. 809).

The Court of Claims found that just compensation for the *Maret* was an amount "[s]omewhere between

what the vessel was worth to the [Government] and what the owners could have gotten for it * * *'" (Pet. App. 15). It noted that the value of the vessel to the Government, according to the petitioners' expert witnesses, was about $176,000, and that this value, according to the Government's experts, was $90,000. The court concluded that an intermediate figure, $150,000, was the value to the Government. Because of the dispute as to title, $100,000 was held to be just compensation. To obtain the actual amount of the judgment, $7,707.21 was added as the agreed value of the consumable stores on board the *Maret* at the time of requisition. From the sum of $107,707.21, there was subtracted the amount the Government spent to discharge liens, namely, $20,842. This left $86,865.21 as the amount of judgment.

ARGUMENT

This case involves the payment of just compensation for a vessel requisitioned by the United States. The Court is asked to determine whether proper weight was given to the testimony of one Government witness and to consider the matter of just compensation for delay in payment. The decision below is correct and, in any event, the questions presented depend on the particular facts of this case and are not of general importance. Under these circumstances, review by this Court is not warranted.

1. Petitioners' contention that the Court of Claims should not have used the figure of $180,000 as the sound-condition value placed on the vessel *Maret* by the witness Pierot is not valid. In determining the

sound-condition value of the *Maret,* consideration was given not only to what the owner of the *Maret* might have been able to obtain on the British and American markets but also on markets free of restrictions. The court below stated that, after the libels against the *Maret* had been discharged, the vessel could have proceeded "anywhere a favorable price could be obtained" (Pet. App. 11). Therefore, the court attempted to achieve a balance between the testimony of the opposing expert witnesses, considering that the petitioners' witnesses, Kjeldsen and Berglind, made their value estimates without considering the restricted British and American markets while the Government witnesses, Rutland and Pierot, included those markets (Pet. App. 30–35). The high valuation figure which petitioner seeks to ascribe to Pierot's testimony would completely distort this balance since it was based on a method of valuation specifically rejected by the witness, that is, comparing the *Maret* with a ship sold on a completely atypical market. Furthermore, this comparison is already taken into account by the court through the testimony of petitioners' experts (Pet. App. 31).

Petitioners, in short, would have the Court of Claims ignore the vast majority of sales which took place subject to governmental restrictions and consider only the isolated atypical sales to a few neutral nations. The court below properly rejected such sales as the sole criterion for determining the fair sound-condition value of the *Maret.* See *United States* v. *Toronto, Hamilton and Buffalo Navigation Co.,* 338 U. S. 396, 402.

2. The Government concedes that petitioners' compensation award should include, as an element, payment for delay in the award of just compensation after ownership of the *Maret* was finally determined by the Court of Claims on December 1, 1953. (126 C. Cls. 809).[1] We believe that it does. Petitioners stress the fact that the Court of Claims failed to make separate mention of such compensation for delay. That court, however, is thoroughly familiar with the principles which govern compensation for delayed payment, *e. g., Brooks-Scanlon Corp.* v. *United States,* 265 U. S. 106; *Seaboard Air Line Railway Co.* v. *United States,* 261 U. S. 299, and there is no reason to suppose that the court did not adhere to these principles in awarding just compensation for the *Maret.* This Court has never required the award for delayed payment to be made in any particular manner or as a separate ele-

[1] The Government correctly argued in the court below that petitioners are not entitled to compensation for delay of payment *prior to the determination of ownership.* The payment of an additional amount as compensation for any delay between taking and payment presupposes that, but for the taking, the owner would have had the use of the property during the delay. When, as here, the owner could not profitably have used the property between the taking and payment (Pet. App. 14), he loses nothing by the delay. See *Luckenbach Steamship Company* v. *United States,* 272 U. S. 533, 542; *Boras Wafveri Aktiebolag* v. *United States,* 108 C. Cls. 708, 717–718. Prior to the determination of ownership, there was no one to whom the Government could safely make payment. While Section 902 (d) of the Merchant Marine Act, 46 U. S. C. 1242, states that compensation should be paid "as soon as practicable", payment here was not possible until the question of ownership was settled. This delay in payment was not the fault of the Government but due to the inability of petitioners to establish their claim.

ment of the award. In the present case, the court was required to consider many uncertain factors, such as various wartime shipping restrictions and the title dispute over the *Maret,* in arriving at its final award. After finding that the *Maret* was worth $150,000 to the Government, the court deducted $50,000 because the value of the *Maret* to the owners was greatly reduced by the title dispute. The resultant award of $100,000 represented what the Court of Claims considered just compensation. Clearly this final award was not arrived at with any mathematical precision, but was taken to be fair under all the circumstances, including the delay in payment and the finding that the petitioners might not have been able to sell the *Maret* at all (Pet. App. 14, 39). The facts of this case do not warrant a review by this Court of the theory of compensation for delayed payment.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER, 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956

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IN THE

Supreme Court of the United States

October Term, 1956

No. 498

TALLINNA LAEVAEHISUS (TALLINN SHIPPING COMPANY) JOSEP FERDINAND MAIPALU, by A. NURMISTE, Mandatory, ISAAK KAIN, Liquidator and Administrator of the Estate of JOHANNES LINKRUUS, THEIDOR LIIMAN, ISAAK KAIN, JULIUS TRUUBERK and JOHANNES INKAPOOL,

Petitioners,

vs.

THE UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Claims

PETITIONER'S REPLY BRIEF

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vs.

THE UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Claims

PETITIONER'S REPLY BRIEF

Statement of Question on Award of an Additional Sum for Delay in Payment

Respondent's Brief on page 2 under "Questions Presented" distorts the question of the statement for review presented on page 2 of the petition at paragraph (c)B, which is that the court below refused to add an additional sum to the award for delay in payment and not whether if such sum were included in the award, the court should

have itemized it as such. It is common practice for the courts to state that such sum for delay in payment is to be added and not leave to conjecture whether or not the award as made contained such sum or not. We are not dealing with a question of dialectics in this case but with a patent error of the court below resulting in petitioners obtaining less than just compensation for their property requisitioned by the United States, in contravention of the Statutes printed in the Appendix to the Petition C and D (pp. 42, 43) and of the Treaty between the United States and Estonia (App. E, pp. 43, 44). The question, as stated in the petition, plainly poses for correction the error of the Court of Claims *in refusing to add to the award a sum for delay in payment* (Finding No. 90, App. A, p. 40) for a period of approximately fifteen years. *The court below refused to add a sum for the last three years even over the concession of the defendant below that the intervenors below were entitled to such sum for that period of time.*

No Award of Additional Sum for Delay Was Made by the Court Below

The next item in the Brief in opposition that merits consideration is at the top of page 7 where it is stated that

> "The government concedes that petitioners' compensation award should include, as an element, payment for delay in the award of just compensation for ownership of the Maret was finally determined by the Court of Claims on December 1, 1953."

The Brief then goes on to say that the government "believes" that the award does contain such additional sum for delay in payment. But on what can such a belief be based for the court below in its finding No. 90 (Pet. App. A, p. 40) found:

> "On account of the conflicting claims to title, *the owners are not entitled to include in just compensa-*

tion any sum for delay in payment." (Italics supplied.)

The award as made, therefore, does not include an amount for delay in payment for any period, not even for the three years which the government to this moment concedes petitioners are entitled to receive, and is contrary to its own order dated November 29, 1949 (Pet. App. F, p. 49), which tolled the accrual of interest until such time as rightful ownership has been determined by the court.

Employment of the Maret between the Time of Requisition and Payment of Award

In the Footnote, page 7 of the Brief in Opposition, the respondent in trying to bolster its argument that no sum other than for the last three years should be included in the award makes the unwarranted assumption that the owners could not profitably have used the property between the taking and payment. There is no finding to such effect by the court below and there was no evidence produced by the respondent that such was the case. Indeed, the evidence produced by petitioners showed that the ship during that time could have been profitably employed. Employment of the ship by the petitioners and the sale of the ship are entirely different propositions and it was shown that other Baltic ships in the same position as the Maret at the time of the requisition were operated at a profit by trustees under court order. Therefore, the assumption of the government is unfounded and erroneous.

Conclusion

For the reasons assigned in the Brief accompanying the Petition, and the refutation of the arguments in the Respondent's Brief in opposition, certiorari should be granted.

Respectfully submitted,

P. A. Beck,
Counsel for Petitioners.